

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.8.2007

CORAM;

THE HONOURABLE MRS.JUSTICE PRABHA SRIDEVAN

A.S.NO.435 of 1995

M/s Sea Horse Shipping &
Ship Management (P)Ltd.,
No.69, Moore Street
Madras 600 001

..Appellant/(1st Defendant)

vs

1.The Board of Trustees of the
Port of Madras, represented
by its Deputy Chairman
Port Trust Buildings
Rajaji Salai
Madras 600 001

2.M/s Cosmopolitan Electronics
H.217, Pascpim Vihar
New Delhi 110 063

..Respondents /(Plaintiff and
2nd Defendant)

The Appeal is filed against the Decree and Judgment of the Court of
VIII Assistant Judge, City Civil Court, Madras dated 20.3.92 made in
O.S.No.2711 of 1989.

for appellant : Mr.K.Bijai Sundar
for respondents : Mr.R.G.Rajan
(for R1)

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JUDGMENT

The first defendant is the appellant. He is a steamer agent. The
Port Trust filed a suit for recovery of demurrage charges from the Steamer
agent and the consignee the second defendant. The suit was decreed.

2. The facts of the plaint is as follows:

The 1st defendant is the steamer agent of the Ship 'Petersif' arrived

on 15.1.1986. It carried inter-alia a consignment of 307 Cartons Electronic components. It landed Line No.147 A of the manifest. No one filed any import application with the 1st defendant's delivery order for clearance. Since it was lying in the plaintiff's transit area uncleared for a considerable time, the same was removed to the uncleared goods warehouse. The plaintiff gave notice of clearance and sale to the first defendant on 1.8.86 and 8.8.86 and notice of sale to the 2nd defendant on 11.8.86. The 1st defendant repudiated the liability and abandoned the suit consignment by the letter dated 18.8.86. There was no response from the 2nd defendant. The plaintiff caused the consignment to be listed for auction on 28.8.86. But, it could not be sold on that day since the customs authorities confiscated the goods. According to the plaintiff, both the defendants are liable to pay the demurrage charges. The first defendant alone filed written statement. The entire liability was denied. According to them, the manifest was filed with the plaintiff who knew the names and addresses of the consignee. A delivery order was issued to the 2nd defendant who failed to clear the cargo. The 1st defendant is not aware of the reasonings for non clearance and the remedy of the plaintiff is only against the consignee and not the 1st defendant.

3. Before the Trial Court 24 documents Ex.A.1 to A24 were marked and two witnesses were examined. There was no oral and documentary evidence on behalf of the 1st defendant. The 2nd defendant remained exparte.

4. Heard the counsel for the parties. The respondent also filed their written submissions and the relevant judgments relied on. Ex.A.4 which is Form No.2 shows clearly that the name of the importer is the second defendant's and the clearing agent is 'M/s Nirmal Seafreight'. Ex.A5 is the intimation to the appellant regarding the dues levied under Section 48 of the Major Port Trust Act. Ex.A6 is the legal notice issued to defendants 1 and 2. By Ex.A.10 the appellant informed the respondent that in spite of their notice the consignees have not cleared the consignment and that they are abandoning the subject cargo and that the respondent port trust should only look to the consignees for demurrage charges. By Ex.A.16 again the appellant has informed that their liability came to an end once the goods were unloaded and placed on the quay side for the consignee to take delivery.

5. According to the learned counsel for the appellant no liability is caused on the appellant to pay the demurrage charges in respect of the goods which were imported. Learned counsel submitted that the responsibility of the appellant came to an end once the goods were received in the Port and thereafter, it is for the consignee to take delivery. According to the learned counsel the documents filed on behalf of the defendants would show that they had discharged their duty as Shipping Agents. He relied on the following judgments to support their case.

6. The learned counsel for the respondents also relied on the judgment of the Supreme Court in C.A.No.187-191/1962 and A.I.R.1977 SC 1622.

7. Notice of clearance and sale were given by the plaintiff to the first defendant on 1.8.1986 and 8.8.86 and notice of sale was given to the second defendant on 11.8.1986 respectively stating that application was made to the customs for the sale of the goods under Sections 61 and 62 of the Major Port Trusts Act. The first defendant repudiated the liability and abandoned the suit consignment by letter dated 18.8.1986. Since there was no response from the second defendant, 1st respondent caused the consignment to be listed for auction held on 28.8.1986. Since the customs withdrew the same and the consignment was confiscated by the Customs.

8. This issue is directly covered by the decision reported in AIR 2001 MADRAS 413 (BOARD OF TRUSTEES OF THE PORT OF MADRAS V. S.S.CORPN.PVT.LTD.,) a case which arose out of almost identical facts and circumstances. There the goods arrived on 6.6.78. No one filed any import application and it was lying uncleared. The Port Trust gave notice to the defendant on 14.2.79. The first defendant who is the Shipping Agent repudiated their liability. There was no response from the consignee. The goods were confiscated and the suit was filed for recovery of the charges due both from the 1st defendant Steamer Agent and the second defendant as a consignee. The Trial Court dismissed the suit and the Port Trust filed the appeal. The learned Judge following 1974 TLNJ 284 (M/s K.P.V.SHEIK MOHAMED ROWTHER AND CO. v. TRUSTEES OF THE PORT OF MADRAS) held that

" The contract is between the Port Trust and the holder of the bill of lading viz., the consignee. The consignee is the bailor and the Port Trust is the bailee and the consignee of the goods, named in the bill of lading for the purpose of their Port Trusts Act, as regarded as owner of the goods irrespective of the endorsement on the bill of lading or issue of the delivery order by the steamer agent. The Port Trust is entitled to recover charges under the Major Port Trusts Act in respect of the goods from the owner, viz., the consignee. In the present case, the plaintiff is entitled to recover demurrage charges in respect of the goods only from the owner of the goods, namely, the second defendant and the first defendant is not liable for the same."

The learned Judge has further relied on the observations of the Division Bench in 1974 TLNJ 284. The relevant portions are as follows:

"Once the goods are handed over to the Port Trust by the steamer and the steamer agents duly endorsed the bill of lading or issued the delivery order, their obligation to deliver the goods personally to the owner or the endorsee comes to an end.

It cannot be said that the steamer or its agents have undertaken any responsibility for the custody of the goods after the transit has come to an end and after the bill of lading has been duly endorsed or a delivery order issued. By the endorsement of the bill of lading or the issue of a delivery order by the steamer agents, the property in the goods vests in such consignee or endorsee, and thus it appears to be clear that the steamer or its agents are not responsible for the custody of the goods after the property in the goods passes to the consignee or endorsee, till the customs authorities actually give clearance. It should also be remembered that the steamer which had entered into a contract of carriage of goods for a reward cannot be said to have undertaken the responsibility of safeguarding the goods or keeping them at their risk till the goods are actually cleared from the customs and taken delivery of by the consignee. That will be imposing a too onerous and unexpected responsibility on the steamer which is only a carrier. If they are subjected to such a responsibility, in most cases where the goods are detained without delivery in the hands of the Port Trust at the instance of the customs the steamer or steamer agents have to pay towards storage or demurrage charges amounts quite disproportionate to the freight they collect for the carriage of the goods, no carrier will undertake such a risk and responsibility. The Court is of the view that the provisions of the Act cannot be so construed as imposing an additional liability or obligation on the carrier which was not contemplated by the contract it had entered into with the shipper."

and on facts considered the method by which delivery orders are issued.

"According to DW-1, there are two ways of issuing delivery order. The first one is by making an endorsement on the back of the delivery order and the second one is by surrendering the bill of lading and getting a separate delivery order. He has further stated that in the present case, the second method was followed and Ex.B.1, original bill of lading was surrendered to them and they issued a separate delivery order to the second defendant. Ex.B.2 endorsement on the back of Ex.B.1 was made by the second defendant and Ex.B.3 endorsement was made by the clearing agent of the second defendant."

In that case it was claimed on behalf of the agent that once the cargo is discharged from the ship, the principal or agent have no right or interest in the goods and the steamer is not liable for the suit claimed. The learned Judge also relied on AIR 1998 SC 142 (SUN EXPORT CORPORATION v. BOARD OF TRUSTEES OF THE PORT OF BOMBAY) wherein it was held that,

"in the case of imports the liability to pay demurrage, on the endorsement being made on the bill of

lading, would be that of the consignee."

9. Against the judgment reported in 1974 TLNJ page 284 an appeal was filed which was dismissed.

10. Judgment reported in AIR 2001 MADRAS 413 has been followed by the learned single Judge in the unreported judgment A.S.No.70/1994.

11. I see no reason to differ from the view taken in the decision reported in AIR 2001 Madras 413. The appeal is therefore allowed and the judgment and decree of the trial Court is set aside insofar as the 1st defendant is concerned. No costs.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Registrar, City Civil Court,
Chennai.
2. VIII Assistant Judge,
City Civil Court, Chennai.
3. The Section Officer,
V.R.Section, High Court, Madras.

+ 1 cc to Mr.K.Bijai sundar Advocate SR.NO.40310
+ 1 cc to R.G.Rajan Advocate SR.NO.49243

GK(CO)
RD 10.9.07

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